

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

~~AT~~ \_\_\_\_\_

~~[PLAINTIFF],~~

BUNGIE, INC., a Delaware corporation,

Plaintiff,

v.

~~[DEFENDANT],~~

~~Defendant.~~

AIMJUNKIES.COM, a business of unknown  
classification; PHOENIX DIGITAL GROUP  
LLC, an Arizona limited liability company;  
JEFFREY CONWAY, an individual; DAVID  
SCHAEFER, an individual; JORDAN GREEN,  
an individual; and JAMES MAY, an individual,

Defendants.

~~CASE NO. [CASE #]~~

~~MODEL~~

Cause No. 2:21-cv-0811 TSZ

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. ~~Accordingly, the~~ The parties ~~hereby stipulate to and petition the court to enter~~ have therefore agreed to the following

[PROPOSED] STIPULATED PROTECTIVE  
ORDER  
(No. 2:21-cv-0811 TSZ) – 1

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1 ~~Stipulated~~ Protective Order. The parties acknowledge that this agreement is consistent with LCR  
 2 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the  
 3 protection it affords from public disclosure and use extends only to the limited information or  
 4 items that are entitled to confidential treatment under the applicable legal principles, and it does  
 5 not presumptively entitle parties to file confidential information under seal.

6 2. ~~2.~~ ~~“CONFIDENTIAL” AND “HIGHLY CONFIDENTIAL” MATERIAL~~

7 2.1 “Confidential” material shall include the following documents and tangible things  
 8 produced or otherwise exchanged: ~~[The parties must include a list of specific documents such as~~  
 9 ~~“company’s customer list” or “plaintiff’s medical records;” do not list broad categories of~~  
 10 ~~documents such as “sensitive business material”]~~ confidential or commercially sensitive  
 11 technical, sales, marketing, personal, or financial information of the producing party (including  
 12 any party to this action and any non-party producing information or material voluntarily or  
 13 pursuant to a subpoena or a court order in connection with this action), or information that the  
 14 producing party is under a legal obligation to maintain as confidential.

15 2.2 “Highly Confidential” material shall include any document, material, or  
 16 information otherwise meeting the definition of “Confidential,” the disclosure of which to  
 17 another party or non-party the disclosing party reasonably believes would likely result in  
 18 competitive, commercial, financial, or other harm to the disclosing party or its clients or  
 19 potential clients. “Highly confidential” material may include, without limitation, proprietary  
 20 technical information in the nature of hardware design documents, source code; proprietary  
 21 software; license key generators; computer passwords; commercially sensitive competitive  
 22 information; trade secret, or other confidential research and development information; and  
 23 commercial agreements, the disclosure of which is likely to cause harm to the competitive  
 24 position of the producing party.

1 3. ~~3.~~ SCOPE

2 The protections conferred by this agreement cover not only confidential material (as  
3 defined above), but also (1) any information copied or extracted from confidential material; (2)  
4 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
5 conversations, or presentations by parties or their counsel that might reveal confidential material.

6 However, the protections conferred by this agreement do not cover information that is in  
7 the public domain or becomes part of the public domain through trial or otherwise.

8 4. ~~4.~~ ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 4.1 ~~4.1~~ Basic Principles. A receiving party may use confidential material that is  
10 disclosed or produced by another party or by a non-party in connection with this case only for  
11 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
12 disclosed only to the categories of persons and under the conditions described in this agreement.  
13 Confidential material must be stored and maintained by a receiving party at a location and in a  
14 secure manner that ensures that access is limited to the persons authorized under this agreement.

15 4.2 ~~4.2~~ Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
16 ordered by the court or permitted in writing by the designating party, a receiving party may  
17 disclose any confidential material only to:

18 (a) ~~(a)~~ the receiving party's counsel of record in this action, as well as  
19 employees of counsel to whom it is reasonably necessary to disclose the information for this  
20 litigation;

21 (b) ~~(b)~~ the officers, directors, and employees (including in house counsel) of  
22 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
23 parties agree that a particular document or material produced is for Attorney's Eyes Only and is  
24 so designated;

1                   (c)     ~~(e)~~ experts and consultants to whom disclosure is reasonably necessary for  
 2 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
 3 A);

4                   (d)     ~~(d)~~ the court, court personnel, and court reporters and their staff;

5                   (e)     ~~(e)~~ copy or imaging services retained by counsel to assist in the  
 6 duplication of confidential material, provided that counsel for the party retaining the copy or  
 7 imaging service instructs the service not to disclose any confidential material to third parties and  
 8 to immediately return all originals and copies of any confidential material;

9                   (f)     ~~(f)~~ during their depositions, witnesses in the action to whom disclosure is  
 10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
 11 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
 12 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
 13 be separately bound by the court reporter and may not be disclosed to anyone except as  
 14 permitted under this agreement;

15                   (g)     the author or recipient of a document containing the information or a  
 16 custodian or other person who otherwise possessed or knew the information

17                   (h)     mediators or discovery masters (and their support staff) assisting in the  
 18 above-captioned action; and

19                   (i)     any other person designated by written agreement of the parties and the  
 20 disclosing party, or by order of the Court, where such disclosure is reasonably necessary for this  
 21 litigation and only after the above named persons have signed the “Acknowledgment and  
 22 Agreement to Be Bound” (Exhibit A).

23                   4.3     Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless  
 24 otherwise ordered by the court or permitted in writing by the designating party, a receiving party  
 25 may disclose any Highly Confidential material only to:  
 26

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation provided those employees are not also employees of the receiving party;

(b) experts and consultants (including computer forensic examiners and custodians) to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the court, court personnel, and court reporters and their staff;

(d) ~~(g)~~ the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(e) mediators or discovery masters (and their support staff) assisting in the above-captioned action; and

(f) any other person designated by written agreement of the parties and the disclosing party, or by order of the Court, where such disclosure is reasonably necessary for this litigation and only after the above named persons have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

4.4 ~~4.3~~ Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the

1 party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal  
 2 being denied, in accordance with the strong presumption of public access to the Court's files.

3 5. ~~5.1~~ DESIGNATING PROTECTED MATERIAL

4 5.1 ~~5.1~~ Exercise of Restraint and Care in Designating Material for Protection. Each  
 5 party or non-party that designates information or items for protection under this agreement must  
 6 take care to limit any such designation to specific material that qualifies under the appropriate  
 7 standards. The designating party must designate for protection only those parts of material,  
 8 documents, items, or oral or written communications that qualify, so that other portions of the  
 9 material, documents, items, or communications for which protection is not warranted are not  
 10 swept unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 13 unnecessarily encumber or delay the case development process or to impose unnecessary  
 14 expenses and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated  
 16 for protection do not qualify for protection, the designating party must promptly notify all other  
 17 parties that it is withdrawing the mistaken designation.

18 5.2 ~~5.2~~ Manner and Timing of Designations. Except as otherwise provided in this  
 19 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or  
 20 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 21 be clearly so designated before or when the material is disclosed or produced.

22 (a) ~~(a)~~ Information in documentary form: (e.g., paper or electronic documents  
 23 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 24 proceedings), the designating party must affix the word "CONFIDENTIAL" or "HIGHLY  
 25 CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions  
 26

1 of the material on a page qualifies for protection, the producing party also must clearly identify  
 2 the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) ~~(b)~~ Testimony given in deposition or in other pretrial proceedings: the  
 4 parties and any participating non-parties must identify on the record, during the deposition or  
 5 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate  
 6 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days  
 7 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of  
 8 the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
 9 confidential information at trial, the issue should be addressed during the pre-trial conference.

10 (c) ~~(c)~~ Other tangible items: the producing party must affix in a prominent  
 11 place on the exterior of the container or containers in which the information or item is stored the  
 12 word “CONFIDENTIAL or “HIGHLY CONFIDENTIAL.”” If only a portion or portions of the  
 13 information or item warrant protection, the producing party, to the extent practicable, shall  
 14 identify the protected portion(s).

15 5.3 ~~5.3~~ Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
 16 to designate qualified information or items does not, standing alone, waive the designating  
 17 party’s right to secure protection under this agreement for such material. Upon timely correction  
 18 of a designation, the receiving party must make reasonable efforts to ensure that the material is  
 19 treated in accordance with the provisions of this agreement.

## 20 6. ~~6.~~ CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 ~~6.1~~ Timing of Challenges. Any party or non-party may challenge a designation of  
 22 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 24 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 25 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 26 original designation is disclosed.

1            6.2    ~~6.2~~ Meet and Confer. The parties must make every attempt to resolve any dispute  
 2 regarding confidential designations without court involvement. Any motion regarding  
 3 confidential designations or for a protective order must include a certification, in the motion or in  
 4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 5 conference with other affected parties in an effort to resolve the dispute without court action.  
 6 The certification must list the date, manner, and participants to the conference. A good faith  
 7 effort to confer requires a face-to-face meeting or a telephone conference.

8            6.3    ~~6.3~~ Judicial Intervention. If the parties cannot resolve a challenge without court  
 9 intervention, the designating party may file and serve a motion to retain confidentiality under  
 10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 12 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
 13 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 14 maintain the material in question as confidential until the court rules on the challenge.

15 7.    ~~7.~~ PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 16 OTHER LITIGATION

17            If a party is served with a subpoena or a court order issued in other litigation that compels  
 18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” or  
 19 “HIGHLY CONFIDENTIAL” that party must:

20            (a)    ~~(a)~~ promptly notify the designating party in writing and include a copy of  
 21 the subpoena or court order;

22            (b)    ~~(b)~~ promptly notify in writing the party who caused the subpoena or order  
 23 to issue in the other litigation that some or all of the material covered by the subpoena or order is  
 24 subject to this agreement. Such notification shall include a copy of this agreement; and

25            (c)    ~~(c)~~ cooperate with respect to all reasonable procedures sought to be  
 26 pursued by the designating party whose confidential material may be affected.



8. ~~8.~~ UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. ~~9.~~ INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. ~~10.~~ NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain ~~one~~two archival ~~copy~~copies of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

3  
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6 ~~DATED:~~ \_\_\_\_\_

7 ~~Attorneys for Plaintiff~~

8  
9 ~~DATED:~~ \_\_\_\_\_

10 ~~Attorneys for Defendant~~

11  
12 Dated: July 18, 2022

13 By: s/ William C. Rava

14 William C. Rava, Bar No. 29948  
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Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to

[PROPOSED] STIPULATED PROTECTIVE  
ORDER  
(No. 2:21-cv-0811 TSZ) –10

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1 those documents, including the attorney-client privilege, attorney work-product protection, or  
2 any other privilege or protection recognized by law.

3 DATED: this \_\_\_\_\_ day of \_\_\_\_\_, 2022.  
4

5  
6  
7 ~~[Name of Judge]~~

Thomas S. Zilly

8 United States District ~~Court~~ Judge  
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[PROPOSED] STIPULATED PROTECTIVE  
ORDER  
(No. 2:21-cv-0811 TSZ) –11

157549028.3

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## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of  
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Western District of Washington on [date] in the  
 case of \_\_\_\_\_ ~~[insert formal name of the case and the number and initials  
 assigned to it by the court]~~ Bungie, Inc. v. AimJunkies.com, et al., No. 2:21-cv-811-TSZ. I  
 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
 any information or item that is subject to this Stipulated Protective Order to any person or entity  
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_